

AUG 23 2022

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
Danville Division

JULIA C. DUDLEY, CLERK
BY: *H. McDonald*
DEPUTY CLERK

JERRY S. FONTAINE, Plaintiff, v. VIRGINIA DEPARTMENT OF CORRECTIONS, et al., Defendants.	CIVIL ACTION NO. <u>4:22cv00104</u> (REMOVED FROM THE CIRCUIT COURT FOR THE COUNTY OF PITTSYLVANIA, VIRGINIA)
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NOTICE OF REMOVAL

Defendants Virginia Department of Corrections (“VDOC”) and Gary Bowker (“Bowker”) (collectively “Defendants”), by counsel and pursuant to 28 U.S.C. §§ 1441 and 1446, hereby remove this action from the Circuit Court for the County of Pittsylvania, Virginia to the United States District Court for the Western District of Virginia (Danville Division).

1. This civil action commenced on or about July 26, 2022, when Plaintiff Jerry S. Fontaine (“Plaintiff”) filed a Complaint against Defendants in the Circuit Court for the County of Pittsylvania, Virginia, bearing the caption *Jerry Fontaine v. Virginia Department of Corrections, et al.* and Case No. CL22000641-00 (“State Court Action”).

2. In his Complaint, Plaintiff asserted claims for alleged violations of: (1) the Civil Rights Act of 1964, (2) the Rehabilitation Act of 1973, (3) the 14th Amendment of the U.S. Constitution and (4) the Virginia Human Rights Act.¹

¹ Plaintiff’s Complaint does not make all of his claims clear. However, in the interest of justice and, in light of Plaintiff’s *pro se* status, Defendants have heretofore interpreted the Complaint liberally in their filings made in the State Court Action. By way of example, Plaintiff’s claim under the “Civil Rights Act” has been construed to be brought under Title VII of the Civil Rights Act of 1964, *as amended*, 42 U.S.C. §§ 2000e *et seq.*

3. VDOC received the Complaint and Summons on or about August 4, 2022.

4. Bowker received the Complaint and Summons on or about August 2, 2022.

5. In response to Plaintiff's Complaint, Defendants filed: (1) a Plea in Bar, Plea of Sovereign Immunity, Plea of Qualified Immunity, and Demurrer to Complaint on August 16, 2022, and (2) a Plea of Sovereign Immunity as to Plaintiff's Claim under Virginia Code § 2.2-3907 on August 17, 2022.

6. The State Court Action is a civil action that involves a federal question over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331, as it alleges claims arising under the Constitution, laws, and/or treaties of the United States. Specifically, the claims under the Civil Rights Act, Rehabilitation Act, and 14th Amendment (Compl. ¶¶ 4-5) arise under the Constitution and laws of the United States over which this Court has original jurisdiction under 28 U.S.C. § 1331. Because this Court has original jurisdiction over the aforementioned claims, this Court also has supplemental jurisdiction under 28 U.S.C. § 1367(a) over the Virginia Human Rights Act claim (Compl. Ex. A) because it forms part of the same case or controversy. Accordingly, Defendants may remove the State Court Action to this Court in accordance with the provisions of 28 U.S.C. § 1441(a) as a matter of law without regard to the citizenship of the parties.

7. Both VDOC and Bowker each individually consent to removal pursuant to 28 U.S.C. § 1446(b)(2)(A).

8. Venue is proper in this Court because the State Court Action was filed in a state court located in the County of Pittsylvania, Virginia, which lies within the Danville Division of the Western District of Virginia.

9. Defendants are timely filing this Notice of Removal within thirty (30) days of their receipt of the Complaint, through service or otherwise, in accordance with 28 U.S.C. § 1446(b)(2)(B)-(b)(2)(C).

10. Per the foregoing, this matter is therefore removable to federal court.

11. In accordance with 28 U.S.C. § 1446(a), true and accurate copies of all process, pleadings, and orders in the State Court Action are collectively attached hereto as **Exhibit A** (specifically, copies of: the Complaint and Summons; the above-mentioned Plea in Bar, Plea of Sovereign Immunity, Plea of Qualified Immunity, and Demurrer to Complaint; the above-mentioned Plea of Sovereign Immunity as to Plaintiff's Claim under Virginia Code § 2.2-3907, and the Notices of Appearance of undersigned counsel filed in the State Court Action are all attached hereto and made a part hereof). Upon information and belief, no further proceedings have taken place in the State Court Action.

12. In accordance with 28 U.S.C. § 1446(d), a Notice of Filing of Notice of Removal is being timely filed with the Clerk of the Circuit Court of the County of Pittsylvania, Virginia. A copy of the Notice of Filing of Notice of Removal (without attachments) is attached hereto as **Exhibit B**.

13. In accordance with 28 U.S.C. § 1446(d), written notice of this Notice of Removal is being timely given to Plaintiff by sending him a copy thereof via U.S. mail, postage prepaid.

WHEREFORE, Defendants VDOC and Bowker respectfully request that the State Court Action be removed to the United States District Court for the Western District of Virginia, Danville Division (which shall assume jurisdiction over this case) and that no further proceedings be taken or be held in the Circuit Court for the County of Pittsylvania, Virginia.

Respectfully submitted,

**VIRGINIA DEPARTMENT
OF CORRECTIONS and
GARY BOWKER**

By Counsel




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and Gary Bowker*

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd of August, 2022, a true copy of the foregoing Notice of Removal was mailed via USPS, postage prepaid, to the following:

Jerry S. Fontaine
4060 Banister Road
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Plaintiff Pro Se



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